

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

IN RE:       TERESA HURSEY,                                 )  
              MARK HUSTON, and                                )  
              FELICIA NORWOOD                                )

OEIG Case #16-00897

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General, and to Teresa Hursey, Mark Huston, and Felicia Norwood at their last known addresses.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

**FINAL REPORT**

**I. INTRODUCTION AND ALLEGATION**

On June 1, 2016, the OEIG received a complaint alleging potential violations of the Illinois Procurement Code (Procurement Code) by Illinois Department of Healthcare and Family Services (HFS) Director Felicia Norwood, Acting Medicaid Administrator Teresa Hursey, Bureau of Ancillary Affairs Bureau Chief Mark Huston, and [Employee 1].

Specifically, the complaint alleged that while there was an active procurement for incontinence supplies, these HFS employees engaged in communications with Philippe Largent, a lobbyist for the Great Lakes Home Medical Supplies Association (Great Lakes), representing incontinence supplies vendors. The alleged communications involved discussions of ways the current vendors could provide cost savings to HFS for the same products in the active procurement in exchange for the procurement being cancelled. The complaint concluded that the communications these HFS employees had with Mr. Largent may have violated the confidentiality and communications reporting requirements in the Procurement Code.

## **II. INVESTIGATION**

### **A. Review Of Relevant Policies**

The Illinois Procurement Code (Procurement Code) and the Illinois Administrative Code (Administrative Code) provide that any written or oral communication that is received by a State employee who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract, and that imparts or requests material information<sup>1</sup> or makes a material argument<sup>2</sup> regarding potential action concerning an active procurement matter,<sup>3</sup> must be reported to the Procurement Policy Board<sup>4</sup> as soon as practicable, but in no event more than 30 days after receipt of the communication.<sup>5</sup> Specifically, these individuals must report key information such as, among other things, the date and time of the communication; the identities of those involved; and a detailed summary of the points made by each participant.<sup>6</sup>

The Procurement and Administrative Codes note, however, that certain communications regarding procurement matters do not need to be reported to the Procurement Policy Board. These communications include, among others, those made in a public forum; those regarding matters of procedure and practice; those regarding the administration and implementation of an existing contract, except communications regarding change orders or the renewal or extension of an existing contract; those that are unsolicited and provide general information about products, services, or industry best practices; and those received in response to procurement solicitations, such as vendor responses to an RFP, or questions and answers posted to the Illinois Procurement Bulletin.<sup>7</sup>

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<sup>1</sup> “Material information” is information that a reasonable person would deem important in determining his or her course of action. It is information pertaining to significant issues, including, but not limited to, price, quantity and terms of payment or performance.” 30 ILCS 500/50-39(g); 2 Ill. Admin. Code 1620.825(b)(1)(A).

<sup>2</sup> “A ‘material argument’ is a communication that a reasonable person would believe was made for the purpose of influencing a decision relating to a procurement matter.” 30 ILCS 500/50-39(g); 2 Ill. Admin. Code 1620.825(b)(1)(B).

<sup>3</sup> “Active procurement matter” means a procurement process beginning with requisition or determination of need by an agency and continuing through the publication of an award notice or other completion of a final procurement action [.]” 30 ILCS 500/50-39(g); 2 Ill. Admin. Code 1620.825(b)(3).

<sup>4</sup> 30 ILCS 500/50-39(a); 2 Ill. Admin. Code 1620.825(a).

<sup>5</sup> 2 Ill. Admin. Code 1620.825(a)(1).

<sup>6</sup> 30 ILCS 500/50-39(b).

<sup>7</sup> 30 ILCS 500-50-39(a); 2 Ill. Admin. Code 1620.825(c).

## B. Summary Of Events

During the investigation, the OEIG reviewed HFS' Incontinence Supplies procurement file and reports made by various HFS staff to the Procurement Policy Board about communications that occurred relating to the Incontinence Supplies procurement matter. The OEIG also interviewed, among others, the following HFS employees regarding the Incontinence Supplies procurement matter and the communications HFS staff had with third parties relating to the procurement matter:<sup>8</sup>

- [Employee 2]
- [Employee 3]
- [Employee 1]
- Mark Huston – Chief, Bureau of Ancillary Services
- Teresa Hursey – Acting Medicaid Administrator
- Felicia Norwood – Director

The documents reviewed and interviews conducted revealed that the following events occurred.

Historically, HFS has contracted with multiple vendors throughout the State to provide incontinence supplies<sup>9</sup> to the State's Medicaid participants. In the spring or summer of 2015, HFS decided to issue a Request for Proposals (RFP) seeking a single vendor to provide these supplies in an effort to obtain the supplies at a lower cost to the State, and increase the quality of the supplies obtained.<sup>10</sup> At this time, Director Norwood directed Ms. Hursey to have Mr. Huston and his staff work with HFS' procurement staff to get the RFP started. On or around September 10, 2015, HFS Bureau of Professional and Ancillary Services staff under Mr. Huston drafted a Procurement Business Case (PBC) detailing the proposed RFP and its objectives, and noting the potential of approximately \$5 million in savings to the State. On October 14, 2015, Mr. Huston and Ms. Hursey<sup>11</sup> approved the PBC for the Incontinence Supplies procurement, and on October 22, 2015, HFS Director Felicia Norwood approved the PBC and directed that the RFP move forward. Ultimately, on January 8, 2016, HFS' RFP seeking a single vendor to provide these incontinence supplies was posted to the Illinois Procurement Bulletin (IPB) and opened for submission.

In the days following the publication of the RFP, HFS [Employee 1] was contacted by various lobbyists and congressional staffers about the RFP. [Two sentences of identifying information are redacted.] [Employee 1] also has no role in the determination of need for a procurement or the creation of a procurement matter, and is not authorized to make decisions regarding RFP proposals.

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<sup>8</sup> [Employee 2] was interviewed on December 20, 2016; [Employee 3] was interviewed on June 30, 2017; [Employee 1] was interviewed on February 22, 2017; Mr. Huston was interviewed on March 7, 2017; Ms. Hursey was interviewed on March 7, 2017; and Director Norwood was interviewed on August 14, 2017.

<sup>9</sup> These supplies include items such as adult diapers and disposable bed pads.

<sup>10</sup> The RFP also sought for the vendor to assess participants' supply needs, and ensure that they receive only the amount of supplies needed each month and not necessarily the maximum allowable monthly quantity.

<sup>11</sup> During her OEIG interview, Ms. Hursey also stated that as Acting Medicaid Administrator, she signs off on all HFS contract awards relating to Medicaid and is ultimately responsible for monitoring those contracts.

During one phone call he received about the Incontinence Supplies RFP, [Employee 1] was asked to arrange a meeting so that Representative Patricia Bellock, Senator Matt Murphy, and others could discuss the RFP with HFS management. On January 27, 2016, Director Norwood, Ms. Hursey, Mr. Huston, and [Employee 1] met with Representative Bellock, Senator Murphy, a House Republican staffer, and Great Lakes representative and registered lobbyist Philippe Largent<sup>12</sup> to discuss the RFP.<sup>13</sup> During this meeting, Director Norwood explained that HFS determined the State could obtain incontinence supplies for its Medicaid participants at a lower price than it had been currently paying for the products, and was looking to move to a single vendor to achieve this goal. Director Norwood was then asked whether HFS would be willing to consider a proposal that would achieve the same objectives as the RFP without moving to a single vendor; no specific details were discussed at this time, but Director Norwood agreed that HFS would consider such a proposal. During her OEIG interview, Director Norwood stated that while HFS staff would not normally be authorized to negotiate with a potential vendor regarding an active RFP, “since I said yes [at this meeting], they could listen to the proposal;” and further stated that Ms. Hursey and Mr. Huston absolutely would have had her authorization to continue discussions about the alternate proposal with Mr. Largent after the January 27, 2016 meeting.

Over the following months, while the Incontinence Supplies RFP remained outstanding, Ms. Hursey, Mr. Huston, and [Employee 1] had numerous conversations and meetings with Mr. Largent about Great Lakes’ proposal that the current incontinence supplies vendors voluntarily reduce the cost of certain incontinence supplies in lieu of the State moving forward with the RFP. During these communications, which occurred between February 2 and April 18, 2016, these HFS employees and Mr. Largent discussed Great Lakes’ specific plans for cutting rates, the vendors who would be providing these supplies, as well as the formal steps HFS was taking in anticipation of moving forward with the voluntary reduction instead of the RFP. None of the communications that occurred during this time were reported to the Procurement Policy Board by anyone involved at the time of the communication. While Director Norwood was not personally present for these communications, she periodically met or spoke with Ms. Hursey and Mr. Huston to be updated on the discussions. In addition, during this time, Director Norwood also had a few communications with outside parties regarding the Incontinence Supplies procurement matter; specifically:

- an April 19, 2016 phone call from Great Lakes President Matt Peterson to Director Norwood, during which Mr. Peterson expressed his disappointment that HFS was moving forward with the Incontinence Supplies RFP. In this call, Mr. Peterson asked Director Norwood whether HFS could extend the RFP so that Great Lakes members who may have not had a chance to submit a proposal could do so. Director Norwood later called Mr. Peterson back and left a voicemail stating that HFS would extend the RFP 10 days; and
- an April 25, 2016 email she received from an incontinence supply vendor expressing concerns about HFS moving forward with the RFP. Director Norwood did not respond to this email.

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<sup>12</sup> At all times relevant to this investigation, Mr. Largent was Great Lakes’ registered lobbyist, per the Illinois Secretary of State lobbyist registration website.

<sup>13</sup> At the time of this meeting, and at all times relevant to this investigation, numerous members of Great Lakes were incontinence supplies providers for the State.

None of Director Norwood's communications were reported to the Procurement Policy Board, either.

As a result of the communications that HFS staff members had with Mr. Largent, Great Lakes believed it had reached a deal with HFS for its members to reduce the price of certain incontinence supplies in order for them to remain the State's suppliers of these items;<sup>14</sup> however, around April 18, 2016, after discussing the pros and cons of Great Lakes' proposal with her staff, Director Norwood decided to extend the RFP and review all submitted proposals before determining how to move forward with the procurement matter. Shortly thereafter, on or around April 27, 2016, [Employee 3] was made aware of the communications the HFS staff members had been having with Mr. Largent over the preceding months regarding the Incontinence Supplies procurement matter by Chief Procurement Officer Ellen Daley. After learning about the content of the communications that occurred by reviewing email communications and having discussions with Director Norwood, Ms. Hursey, Mr. Huston, and [Employee 1] regarding their communications, [Employee 3] determined that these communications should have been reported to the Procurement Policy Board. Accordingly, [Employee 3] informed Director Norwood, Ms. Hursey, Mr. Huston, and [Employee 1] that they needed to report the communications they had about the Incontinence Supplies RFP.<sup>15</sup> Between May 6 and 10, 2016, Director Norwood, Ms. Hursey, Mr. Huston, and [Employee 1] reported approximately 45 communications they had with Mr. Largent and other individuals about the RFP between January 15 and May 2, 2016.

On or around May 6, 2016, Director Norwood decided to cancel the Incontinence Supplies RFP because the communications that she, Ms. Hursey, Mr. Huston, and [Employee 1] had with Mr. Largent about the RFP and Great Lakes' proposal in lieu of the RFP had not been reported to the Procurement Policy Board in the manner required by the Procurement Code and Administrative Code. As a result of the RFP's cancellation, all of the vendors that were providing incontinence supplies to the State's Medicaid participants before the RFP remained the providers of these supplies, and no reduction in the cost of these supplies to the State occurred. At the time of this investigation, HFS had no plans to issue a new RFP for incontinence supplies.

### **C. Summary Of Relevant Statements Made By HFS Staff**

During their respective OEIG interviews, Ms. Hursey, Mr. Huston, and [Employee 1] each acknowledged that the procurement communications reporting statutes state that certain individuals involved in communications relating to procurement matters must report those communications to the Procurement Policy Board. Each also admitted that they had communications with Mr. Largent that involved Great Lakes' specific proposal to reduce the cost

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<sup>14</sup> Great Lakes President Matt Peterson made this remark to Director Norwood during their April 19, 2016 phone call.

<sup>15</sup> During her OEIG interview, [Employee 3] explained that after she was made aware of the communications by Ms. Daley, she contacted then-Office of the Governor Deputy General Counsel Georgia Man regarding the matter. [Employee 3] stated that Ms. Man instructed her to determine who had conversations about the Incontinence Supplies procurement matter, and when those communications occurred. [Employee 3] stated that she, with the help of Ms. Man, created a summary of communications that occurred based on her review of emails and the conversations she had with HFS staff. [Employee 3] stated that it is her understanding that the Office of the Governor agreed that all of these communications needed to be reported.

of incontinence supplies instead of HFS moving forward with the RFP after the Incontinence Supplies procurement became an active procurement matter.

Still, Mr. Huston and [Employee 1] stated that they did not think they were required to report the communications they had with Mr. Largent regarding the Incontinence Supplies RFP because they did not believe they were required reporters under the relevant procurement communication statutes.<sup>16</sup> Mr. Huston added that since Mr. Largent himself is not a vendor, he would not have thought their communications needed to be reported. Ms. Hursey and Director Norwood, meanwhile, both acknowledged that the procurement communications reporting requirements apply to them, but said they were unaware they needed to report the communications they had with Mr. Largent until [Employee 3] informed them that they needed to do so around April or May 2016. However, while Ms. Hursey acknowledged that her failure to report the communications she was involved in within 30 days of their occurrence did not comport with the procurement communications reporting requirements, she stated that she personally did not interpret the statute that way. Ms. Hursey said it had been her understanding at that time that only communications with known potential bidders or their representatives had to be reported to the Procurement Policy Board. She further explained that she did not believe either Mr. Largent or Great Lakes were vendors or represented known vendors.<sup>17</sup> Ms. Hursey also stated that Mr. Largent's proposal had nothing to do with the Incontinence Supplies RFP, but instead was about reducing the reimbursement rates of the current incontinence supplies providers.

Director Norwood, Ms. Hursey, Mr. Huston, and [Employee 1] all stated that they were informed in April or May 2016, that they needed to report the communications they had about the Incontinence Supplies RFP. Each stated that they reported the communications they were involved in shortly thereafter. Ms. Hursey, Mr. Huston, and [Employee 1] added that no one other than [Employee 3] told them to report the communications they were having with Mr. Largent at any time during the procurement process.

#### **D. HFS' Subsequent Efforts Relating To Procurement Communications Reporting**

During her OEIG interview, [Employee 3] stated that after concerns over the Incontinence Supplies procurement communications became known, she educated staff that could be involved in communications with vendors and potential vendors about the requirements for reporting those communications. Director Norwood confirmed that in response to the Incontinence Supplies procurement communications reporting issue, all HFS employees involved in the procurement process were mandated to complete training related to the communications reporting

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<sup>16</sup> Both [Employee 1] and Mr. Huston stated that they did not believe they had the authority to participate personally and substantially in the awarding of a State contract. A review of HFS records revealed that [Employee 1] does not, in fact, have the authority to participate personally and substantially in the awarding of State contracts; Mr. Huston, Ms. Hursey, and Director Norwood do have this authority. Accordingly, Mr. Huston, Ms. Hursey, and Director Norwood are required reporters under the relevant statutes.

<sup>17</sup> Ms. Hursey stated that she would consider a lobbyist that represents a company to be a known potential vendor if that company had the capability to provide the services at issue in the specific RFP. Ms. Hursey stated, however, that Great Lakes is a trade association of medical services providers rather than their representative.

requirements.<sup>18</sup> Director Norwood said the Incontinence Supplies procurement matter was a “learning experience” for the whole team, and she believes this training made everyone cognizant about what needs to be reported and has made people think twice about having certain conversations. [Employee 3] added that it is now the norm for HFS staff to tell any vendors or potential vendors, if and when approached about a procurement matter, that there is an open procurement and the staff cannot and will not comment on it.

### III. ANALYSIS

The Procurement and Administrative Codes both provide that any written or oral communication must be reported to the Illinois Procurement Policy Board if it:

- is received by a State employee who, by the nature of his or her duties, has the authority to participate personally or substantially in the decision to award a State contract;
- imparts or requests material information—that is, information pertaining to significant issues that a reasonable person would deem important in determining his or her course of action—or makes a material argument regarding potential action concerning an active procurement matter; and
- is not otherwise excepted from reporting, as defined in the relevant statutes.<sup>19</sup>

Beginning on January 27, 2016 and continuing through at least April 2016—during which time the Incontinence Supplies procurement was an active procurement matter, Teresa Hursey and Mark Huston each engaged in numerous communications with Mr. Largent regarding the Incontinence Supplies RFP and Great Lakes’ alternate proposal that current vendors instead lower the prices of the incontinence supplies they were providing in lieu of HFS moving forward with the RFP. Aside from the January 27, 2016 meeting, which consisted of a basic discussion about the existence of the Incontinence Supplies RFP and an inquiry as to whether HFS would be willing to consider an alternate proposal, all of the communications Ms. Hursey and Mr. Huston had with Mr. Largent involved significant information related to the active Incontinence Supplies procurement matter. These discussions involved the price of certain incontinence supplies, the providers of these supplies, the formal procedural steps HFS was and would be taking in order to move forward with the alternate proposal rather than following through with the RFP, and more—all things undoubtedly important in determining HFS’ course of action with respect to the Incontinence Supplies RFP.

In her role as Acting Medicaid Administrator, Ms. Hursey is responsible for signing off on all Medicaid-related contract awards and for monitoring HFS’ contracts related to Medicaid; Mr.

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<sup>18</sup> Investigators obtained a June 2016 memorandum from [Employee 3] to Director Norwood and a procurement communications reporting training outline prepared by HFS staff that each detail the procurement communications reporting requirements, including who must report communications, what must be reported, and more.

<sup>19</sup> 30 ILCS 500/50-39; 2 Ill. Admin. Code 1620.825. The OEIG notes that the Procurement and Administrative Codes also contain provisions specifically relating to the reporting of communications with lobbyists. 30 ILCS 500/50-39(c); 2 Ill. Admin. Code 3002.1400(b). While the OEIG’s report does not focus on these provisions, the OEIG recognizes that they may, in fact, apply to the communications discussed in this report.

Huston, as Bureau Chief of the HFS Bureau of Ancillary Services, was responsible for the team that drafted the Incontinence Supplies RFP, and signed off on the Procurement Business Case for the Incontinence Supplies RFP, ultimately giving approval for the procurement to move forward. Both had the authority to participate personally and substantially in the Incontinence Supplies procurement matter, and both were therefore required to report all of the applicable communications they had with Mr. Largent to the Procurement Policy Board within 30 days of their occurrence.

However, Ms. Hursey and Mr. Huston failed to report any of the communications that they were involved in until at least May 6, 2016—more than 30 days after the date of all the communications they participated in from at least January 2016 through the beginning of April 2016. While Ms. Hursey maintained that Mr. Largent was not the representative of any known vendor because he represented a trade association rather than individual businesses, the relevant statutes do not carve out such a distinction. Further, although Ms. Hursey alternatively claimed that the communications she had with Mr. Largent were not about the active procurement matter, and instead were about current reimbursement rates, the OEIG disagrees. The communications HFS staff engaged in with Mr. Largent were not communications regarding the administration of the State's existing incontinence supplies contracts; rather, they were communications relating to a future contract with different terms and goals, and they had the ability to directly affect the active procurement matter.

HFS Director Felicia Norwood also participated in the aforementioned January 27, 2016 meeting and was generally asked and agreed to review an alternate proposal for the provision of incontinence supplies in lieu of moving forward with the RFP. While Director Norwood was not a participant in the ensuing communications regarding the alternate proposal, there were a couple of communications that Director Norwood did receive including one request to extend the date of the RFP and another vendor expressing concerns regarding the RFP. These communications are arguably material and were not reported to the Procurement Policy Board within 30 days of their occurrence. Furthermore, Director Norwood directed and authorized Ms. Hursey and Mr. Huston to have the continuing discussions with Mr. Largent about his alternate proposal. Despite this, Director Norwood never instructed her staff to report the communications they were having with Mr. Largent at any time during the procurement process, and thus, contributed to the violations of the procurement communications reporting statutes. Ultimately, Director Norwood failed to ensure these communications were properly reported to the Procurement Policy Board.

Given the foregoing, the allegations that Director Norwood, Teresa Hursey, and Mark Huston violated procurement communications reporting requirements by failing to report communications they had or were otherwise involved in or aware of to the Procurement Policy Board within 30 days of those communications occurring are **FOUNDED**.<sup>20</sup>

[This section, consisting of one paragraph, is related to an unfounded matter and the Commission exercises its authority pursuant to 5 ILCS 430/20-52(b) to redact it.]

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<sup>20</sup> The OEIG concludes that an allegation is “founded” when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.



#### IV. FINDINGS AND RECOMMENDATIONS

As a result of its investigation, the OEIG concludes that there is **REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDINGS:**

- **FOUNDED** – Teresa Hursey violated procurement communications reporting requirements by failing to report her communications with Philippe Largent to the Procurement Policy Board within 30 days of those communications occurring.
- **FOUNDED** – Mark Huston violated procurement communications reporting requirements by failing to report his communications with Philippe Largent to the Procurement Policy Board within 30 days of those communications occurring.
- **FOUNDED** – Felicia Norwood violated procurement communications reporting requirements by failing to report communications regarding the Incontinence Supplies RFP to the Procurement Policy Board within 30 days of those communications occurring.
- **UNFOUNDED** – [Unfounded matter redacted.]

The OEIG notes that HFS conducted training on the procurement communications reporting requirements for staff involved in procurement matters once it was made aware of the problematic communications discussed in this report. The OEIG recommends that HFS continue providing regular training for these staff members—as well as others involved in procurement matters but who may not be required to report their communications, such as [Employee 1]—on all of the rules and regulations related to procurement matters, including the procurement communications reporting requirements, and those specifically relating to lobbyists. Finally, the OEIG recommends HFS ensure appropriate staff are reporting and continue to report the communications they have regarding active procurement matters.

In addition, the OEIG recommends that the Office of the Governor work with HFS to implement the above recommendations, and consider ensuring other directors and relevant managers at agencies under its jurisdiction are similarly aware of and trained on procurement communications statutes and requirements.

No further investigative action is warranted and this case is considered closed.

Date: December 6, 2017

Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
69 W. Washington St., Suite 3400  
Chicago, IL 60602

**Colleen Thomas**  
Assistant Inspector General

**Edward Escamilla**  
Investigator #137



The Governor's Office reviewed the Final Report and the investigatory materials furnished to it by the OEIG in support of these findings. The Governor's Office accepts and agrees with all the findings of the OEIG in the Final Report.

Based on the findings, the OEIG made three recommendations to the Governor's Office and/or HFS. This letter will address each recommendation in turn.

**Recommendation 1: HFS should continue providing regular training for the above-mentioned staff members—as well as others involved in procurement matters who may not be required to report their communications—on all of the rules and regulations related to procurement matters, including the procurement communications reporting requirements, and those specifically relating to lobbyists.**

The Governor's Office accepts and agrees with the recommendation.

Upon discovery of the findings described in the OEIG's report, HFS conducted training on procurement communications for staff, including Director Norwood and other staff involved in procurement matters generally. First, HFS developed, with input from the Governor's Office, a June 16, 2016 memorandum regarding procurement communications reporting to facilitate its training (*Exhibit A*). Training was conducted by HFS's general counsel, its ethics officers, and its procurement counsel. Second, HFS followed up on the initial training with a further training in September 2016 that was specifically on procurement communications reporting. In connection with this training, HFS legal counsel prepared an outline that was provided to attendees (*Exhibit B*). This outline provides HFS employees with a useful reference on procurement reporting obligations.

The Governor's Office, in connection with these findings, has directed HFS to continue to train all relevant staff pursuant to the guidance it has developed.

**Recommendation 2: HFS should ensure appropriate staff are reporting and continue to report the communications they have regarding active procurement matters.**

The Governor's Office accepts and agrees with the recommendation. HFS, in light of the findings accepted here, has remained vigilant in the exercise of its reporting obligations. Ongoing training helps to strengthen the relationship between procurement personnel and legal counsel who can advise on appropriate reporting obligations. If a violation occurs, HFS is committed, as it did in this matter, to report issues to the appropriate bodies and thoroughly investigate those issues itself pursuant to law. The Governor's Office supports these efforts, and has directed HFS to continue to comply with the OEIG's recommendation.

**Recommendation 3: The Office of the Governor should work with HFS to implement the above recommendations, and consider ensuring other directors and relevant managers at agencies under its jurisdiction are similarly aware of and trained on procurement communications statutes and recommendations.**

The Governor's Office accepts and agrees with the recommendation.

As a general matter, the Governor's Office believes strongly and exhorts its agencies that procurement in Illinois should be transparent and ethical and should achieve the best deal for taxpayers. To that end, it is vitally important that State agency staff are thoroughly trained and knowledgeable about all legal requirements regarding procurement communications, as well as other ethical questions regarding procurement more broadly. The Governor's Office also appreciates that agency employees take training and their legal obligations seriously when senior leadership, starting with agency directors, sets the tone that compliance matters.

For instance, with the recent passage of Senate Bill 8, the Procurement Code now imposes new penalties for violations of the Code's ex parte communications rules. The Governor's Office, through the office of its General Counsel, has directed agency general counsels (1) to ensure that they are familiar with the new requirements of SB 8; (2) to coordinate with their legal and procurement staff on the new requirements of SB 8; and (3) to emphasize the important role that legal advisors must play in day-to-day procurement and grant making processes. Through the Governor's Office of Operations and Transformations, the Governor's Office has also advised agency directors on their reporting obligations.

The Governor's Office, through the office of its General Counsel, has provided or facilitated expanded procurement training both within the Governor's Office and for all agency general counsels, including:

- On September 1, 2017, the Governor's Office received a training by the Chief Procurement Officer of its entire staff on procurement. Part of the purpose of this training was to help ensure Governor's Office staff follow the Procurement Code's reporting obligations; but the training was also meant to help train Governor's Office staff to be knowledgeable and to help advise agency personnel with whom they liaise on procurement issues.
- On September 19, 2017, the Governor's Office, with the Office of Management and Budget and with the Chief Procurement Officer, conducted a videotaped training on procurement for the Department of Children and Family Services. Materials from that training, as well as the videotape itself, are available to general counsels for reference. This training was introduced with a segment on procurement ethics, including a discussion of the Code's procurement communications guidelines.
- On January 11, 2018, the Governor's Office legal counsel conducted a follow-up training on procurement reporting requirements for general counsels as part of its monthly meeting with general counsel. As part of this training, agency general counsels were

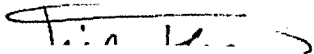
directed to advise their directors and senior staff on their reporting requirements.

The Governor's Office is actively engaged in continuing and expanding these efforts. The Office, through the office of its General Counsel, is working with the Executive Ethics Commission and the Chief Procurement Office for General Services to develop a comprehensive half-day or day-long training on various aspects of procurement, with the goal of offering the training in the spring or early summer. The training that is under development is intended for both agency procurement staff and legal counsel. It would include many different aspects of the procurement process and procurement-related ethics issues, including ex parte communications and procurement reporting obligations. The Governor's Office will continue to look for more opportunities to communicate the importance of compliance with the Code's reporting obligations.

If you have any questions or require any further information with respect to this reply, please do not hesitate to contact me.

Sincerely,

Christina McClemon  
Associate General Counsel, Ethics Officer



By                       
Jill Hutchison  
Deputy General Counsel and Chief Compliance Officer  
Office of Governor Bruce Rauner

cc:

Lise Spacapan  
General Counsel  
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## EXHIBIT A – (4 pages)

**Healthcare and Family Services  
Inter-Office Memorandum**

**DATE:** June 16, 2016

**TO:** Felicia F. Norwood, Director

**FROM:** Mollie K. Zito, General Counsel

**RE:** Procurement Communications Reporting

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**Background**

30 ILCS 500/50-39 governs when a State employee must report a communication with a vendor or potential vendor regarding a procurement matter. Specifically, 30 ILCS 500/50-39(a) provides:

Any written or oral communication received by a State employee who, by the nature of his or her duties, has the authority to participate personally and substantially in the decision to award a State contract and that imparts or requests material information or makes a material argument regarding potential action concerning an active procurement matter, including, but not limited to, an application, a contract, or a project, shall be reported to the Procurement Policy Board, and, with respect to the Illinois Power Agency, by the initiator of the communication, and may be reported also by the recipient. [Emphasis added.]

The administrative rules governing procurement communication reporting are found in the Executive Ethics Commission administrative rules at 2 Ill. Adm. Code 1620.825.

In general, if the communication is about something reasonably significant (i.e. price, quantity, performance, payment, etc.), could reasonably affect the initiation, development or outcome of a procurement matter, and the agency has already determined a need exists for the service/supply, then (with limited exceptions) the communication must be reported by the State employee on the Procurement Policy Board website.

**Definitions**

Under 30 ILCS 500/50-39 State employees who have the authority to participate personally and substantially in the decision to award a State contract are required to report certain "material" communications with vendors and potential vendors regarding a potential action relating to an active procurement matter within 30 days after receipt of the communication.

The code defines material as:



"Material information" is information that a reasonable person would deem important in determining his or her course of action including information pertaining to significant issues, including, but not limited to, price, quantity and terms of payment or performance. [30 ILCS 500/50-39(g)]

"Material argument" is a communication that a reasonable person would believe was made for the purpose of influencing a decision relating to a procurement matter. It does not include general information about products, services or industry best practices. [30 ILCS 500/50-39(g)]

The administrative rules further clarify that when determining whether a communication is material the State employee must consider whether the information conveyed is new or already known to the State agency and the likelihood that the information would influence a pending procurement matter.<sup>1</sup>

The administrative rules also clarify that a "potential action" is one that a reasonable person would believe could affect the initiation, development or outcome of a procurement matter.<sup>2</sup>

"Active procurement matter" is also defined in the code. Specifically 30 ILCS 500/50-39(g) states:

"Active procurement matter" means a procurement process beginning with requisition or determination of need by an agency and continuing through the publication of an award notice or other completion of a final procurement action, the resolution of any protests, and the expiration of any protest or Procurement Policy Board review period, if applicable. "Active procurement matter" also includes communications relating to change orders, renewals, or extensions.

The administrative rules specifically state that active procurement matters include the following:

1. Drafting, reviewing or preparing specifications, plans or requirements, including determining the method of source selection;
2. Drafting, reviewing or preparing any Invitations for Bid, Requests for Information, Requests for proposals, sole source procurement justifications, emergency procurement justifications or selection information;
3. Evaluating bids, responses and offers, other communications among an evaluation team and any technical advisors to the team relating to the evaluation of a procurement not yet awarded;
4. Letting or awarding a contract;
5. Resolving protests;
6. Determining inclusion on prequalification lists or prequalification in general;

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<sup>1</sup> 2 Ill. Adm. Code 1620.825(b)(1)(C).

<sup>2</sup> 2 Ill. Adm. Code 1620.825(b)(2).

7. Identifying potential conflicts of interest or voiding or allowing a contract, bid, offer or subcontract for a conflict of interest;
8. Allowing a conflict or subcontract pursuant to Section 50-60 of the Illinois Procurement Code; and
9. Determining, drafting, preparing, executing, denying or approving change orders or the renewal or extension of an existing contract.

#### **Communications Exempt from Reporting**

Communications are exempt from the requirement of reporting if they fall into one of the following categories:

1. Public statements made in a public forum;
2. Matters of procedure and practice (i.e. number of copies required, manner of filing, status of the matter, etc.);
3. Communications regarding the administration and implementation of an existing contract (*except communications regarding change orders or the renewal or extension of an existing contract*);
4. Statements between State employees in the normal course of business;
5. Unsolicited communications providing general information about products, services or industry best practices, before those products or services become involved in a procurement matter;
6. Communications received in response to procurement solicitations;
7. Communications that are privileged, protected or confidential under law; and
8. Communications that are part of the formal procurement process including but not limited to:
  - a. Posting of procurement opportunities;
  - b. Processes for approving a procurement business case or its equivalent;
  - c. Fiscal approval;
  - d. Submission of bids; and
  - e. Finalizing of contract terms and conditions with an awardee or apparent awardee.

#### **Change Orders, Renewals or Extensions of an Existing Contract**

Communications regarding change orders or the renewal or extension of an existing contract must be reported. 30 ILCS 500/1-15.12 defines "change order" as:

A change in a contract term, other than as specifically provided for in the contract, which authorizes or necessitates an increase or decrease in the cost of the contract or the time for completion for procurements subject to the jurisdiction of the chief procurement officers appointed pursuant to Section 10-20.

State employees should be reporting an initial conversation with an existing vendor about a contract amendment that would change the price of the contract or extend the existing contract. Subsequent conversations regarding the contract amendment, however, do not need to be reported since the communications would fall under the

"finalizing of contract terms and conditions with an awardee or apparent awardee" exemption in 30 ILCS 500/50-39(a).<sup>3</sup>

Additionally State employees should be reporting an initial conversation with an existing vendor about the renewal of an existing contract. Again, however, subsequent conversations regarding the specifics of the renewal would fall under the "finalizing of contract terms and conditions with an awardee or apparent awardee" outlined in 30 ILCS 500/50-39(a).<sup>4</sup>

### **Reporting**

Reports are made on the Procurement Policy Board website at <http://www.illinois.gov/ppb/Pages/procurement-communications-reporting.aspx>. Reportable communications must be reported as soon as practicable, but in no event more than 30 days after receipt of the communication, or the first in a series of communications. The following information must be reported:

1. Date, time and duration of each communication;
2. Identities of persons and individuals or entities represented, communicating, receiving and responding;
3. Action requested or recommended;
4. Summary of points made;
5. Location of all persons involved in the communication;
6. Telephone numbers if the communication occurred by telephone; and
7. Other pertinent information.<sup>5</sup>

### **Penalties**

State employees who knowingly and intentionally fail to comply with the reporting requirements shall be subject to suspension or discharge.<sup>6</sup>

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<sup>3</sup> This interpretation of the law is based on conversations with Joanna Gunderson, Deputy General Counsel for the Executive Ethics Commission, as well as a presentation from the Chief Procurement Office titled "The 5 W's for Vendors, How to Navigate State Procurement Communications," Slide 17, November 2015.

<sup>4</sup> This interpretation of the law is based on conversations with Joanna Gunderson, Deputy General Counsel for the Executive Ethics Commission, as well as a presentation from the Chief Procurement Office titled "The 5 W's for Vendors, How to Navigate State Procurement Communications," Slide 17, November 2015.

<sup>5</sup> 30 ILCS 500/50-39(b).

<sup>6</sup> 30 ILCS 500/50-39(c).

## EXHIBIT B – (2 pages)

## **Procurement Communications Reporting Training Outline**

### **Background**

30 ILCS 500/50-39 effective January 1, 2011, governs when a State employee must report a communication with a vendor or potential vendor regarding a procurement matter.

### **Who must report?**

- A State employee who by the nature of his/her duties has the authority to participate personally and substantially in the decision to award a State contract.
- The onus is on the State employee to report.

### **What must be reported?**

- Written or oral communications received that discuss material information or make a material argument regarding potential action concerning an active procurement matter.
  - Material information is information that you believe would be important in your decision on a procurement matter – price, quantity and terms of payment or performance.
  - Potential action is the initiation, development or outcome of a procurement matter.
- Communications regarding renewal of a current contract or amendment of a current contract when the communication discusses increasing the term of the contract or price of the contract.

### **What is an active procurement matter?**

- An active procurement matter starts when the Department determines that there is a need for a procurement.
- An active procurement continues through all processes of the procurement, including the resolution of any protests.
- An active procurement matter also includes contract renewals and contract amendments.

### **What communications are exempt from reporting?**

- Communications regarding the administration of a current contract except when the conversation is a discussion about renewing the contract or amending the contract.
- Unsolicited communications providing general information about products, services or industry best practices.
- Communications that are in response to a procurement solicitation or are part of the formal procurement process.

What is the timeframe for reporting and how often do I report?

- A State employee must report a procurement communication that is not exempt under the code within 30 days after that communication.
- Only the initial conversation must be reported.
- Subsequent conversations do not need to be reported since the communication would fall under the exemption for the formal procurement process.

Where do I report and what do I report?

- Reports are to be made on the Procurement Policy Board website.
- The information you need to report is listed in the memo that was distributed to you regarding procurement communications reporting.

Other

- Procurement communications reporting is not meant to have a chilling effect on procurement communications.
- You can have the conversations; you just need to report the conversations.
- Report to the best of your ability.
- Penalties apply for not reporting.
- If you have a question about a specific situation, contact Ethics Officer Shannon Stokes. Although the onus is on the employee to report, an employee may rely on a good faith opinion of its Ethics Officer.